

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6321 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

1 - Yes

2 to 5 - No

ISHWARBHAI O RABARI

Versus

STATE OF GUJARAT

Appearance:

MR PK JANI for Petitioners

MR.UDHAY BHATT, Asstt.Govt. Pleader for Respondent

Nos.1,2 & 4

MR SN SHELAT for Respondent No. 3

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE R.P.DHOLAKIA

Date of decision: 17/12/97

ORAL JUDGEMENT (Per: C.K.Thakkar,J.)

This petition is filed by the petitioners by which
a direction is sought against the Land Acquisition

Officer, respondent no.2 herein, to make reference to a competent court as the petitioners were aggrieved by the award dated February 24, 1988, Annexure "B" to the petition.

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#. It is the case of the petitioners that they are residents of Village Nagalpur, Taluka and District Mehsaha. The Gujarat Industrial Development Corporation, respondent no.3 herein, ('Corporation' for short) intended to establish an industrial estate at Village Nagalpur for which it needed land. A notification under sec.4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') was, therefore, issued on July 31, 1984 which was published on September 13, 1984. It is averred in the petition that the villagers of Nagalpur Village agreed to give land for the purpose of establishing an industrial estate and therefore, petitioners alongwith some other persons signed a consent letter on November 5, 1985 wherein it was stated that they have agreed for the acquisition of land by the Government. Accordingly, they handed over possession of land on December 3, 1985. Thereafter a notification under sec.6. was issued on March 7, 1987. A consent award under sub-sec.(2) of sec.11 was passed on February 24, 1988 which was impugned by the petitioners. According to them, there was a tubewell, a house and pipelines erected for supplying water in agricultural fields in survey no.655-2 and the petitioners were given to understand that if all these properties would be acquired, they would be paid compensation and on that understanding, they entered into an agreement. Subsequently, however, when they read the consent award dated February 24, 1988, they found that it was only the compensation of land which was given and nothing was given towards a tubewell, a house and pipelines. An application was, therefore, made to the Land Acquisition Officer to refer the matter to a competent Court. The said application, however, was rejected on the ground that as the award was consent award, an application under sub-sec.(1) of sec.11 was not maintainable. Mr.P.K.Jani, learned counsel for the petitioner contended that when the award was made and the parties were aggrieved and an application was made to refer the matter to a competent court, it was obligatory on the part of the Land Acquisition Officer to make reference to a competent court and by rejecting the application, an error of law was committed by the Officer. It was also contended that the petitioners were given to understand that they will be paid compensation for a tubewell, a house and pipelines and on the basis of such assurance, they had entered into an agreement. It was,

therefore, not open to the respondent Land Acquisition Officer not to award any compensation and on that ground also, the award is vitiated and rejection of application is contrary to law. It was further argued that clause 7 of the agreement which provides that the petitioners will be paid compensation as will be decided by Executive Engineer of the Corporation for the wells, pipelines and house and the construction is illegal, improper and inequitable as it shakes the conscience and is also against public policy. Reliance in this connection was placed on a decision of the Hon'ble Supreme Court in Central Inland Water Transport Corporation and another Vs. Brojo Nath Ganguly and another AIR 1986 S.C. 1571 and particularly on paragraph 93 of the reported decision wherein it was observed that if any term or condition in a contract is unconscionable, the Court would not give the effect to such a condition. In these circumstances, it was pointed out that the order requires to be interfered with.

#. Mr. Shelat, learned counsel for respondent no.3, on the other hand, supported the order. He relied on the affidavit-in-reply filed by the Manager (Law and Inquiry) of the Corporation as also the consent award. He submitted that the parties entered into an agreement and such agreement was signed by the petitioners. In the said agreement, a provision is made with regard to payment of interest, solatium and other benefits. Regarding determination of compensation, necessary provisions have been made and it was agreed between the parties and a consent award was passed and it was not open to the petitioners to seek reference under sub-sec.(1) of sec.11 as in case of consent award, the governing provisions would be sec.11(2) and not sec.11(1). For this purpose, Mr. Shelat relied upon the following decisions of the Hon'ble Supreme Court:

1. Ishwarlal Premchand Shah and others etc. Vs.
State of Gujarat, AIR 1996 S.C. 1616;
2. State of Gujarat Vs. Daya Shamji Bhai, etc.,
AIR 1996 S.C. 133; and
3. Abdul Aziz Abdul Razak and another Vs.
Municipal Corporation of Greater Bombay, AIR
1996 S.C. 1350.

#. In our view, none of the contentions raised by the learned counsel for the petitioner can be upheld. As observed in the aforesaid three decisions which we have also considered in a cognate matter being Special Civil

Appln. No.8221 of 1988 and Special Civil Appln. No.2962 of 1989, decided today, that the ambit and scope of sub-sec.(1) of sec.11 and sub-sec.(2) of sec.11 is different. In case of an award on determination by Land Acquisition Officer falling under sub-sec.(1) of sec.11, a party can seek reference and a competent court will decide under sec.23 of the Act. But once it is held that there was an agreement between the parties and a case is covered by sec.11(2) of the Act, an application for seeking the reference is not maintainable.

#. In the instant case, Mr.Shelat is right in submitting that the agreement was entered into as early as in 1985. Part payment was made and the possession was also handed over by the petitioner to the Corporation. As the entire payment was not received by the petitioners and part payment was to be made by the Corporation to them, the Corporation wrote a letter in November, 1988 asking the petitioners to receive the remaining amount. It was, however, not done by the petitioners. Again, a letter was written on December 31, 1988 and only thereafter, the petitioners made an application. According to him, the act of filing the application was an after-thought only with a view to get some more amount. As the point is included by the Hon'ble Supreme Court in aforesaid decisions, an application to seek reference was not maintainable in case of consent award under sec.11(2). The Land Acquisition Officer has not committed any error in rejecting the said application and that order cannot be said to be illegal.

#. In our opinion, the act of the Land Acquisition Officer is in accordance with the provisions of the Act as also the ratio laid down by the Hon'ble Supreme Court in aforesaid decisions. The respondents have not committed any error of law and hence, the petition deserves to be dismissed and is accordingly dismissed. In the peculiar circumstances of the case, there is no order as to costs.

Sd/-

(C.K.Thakkar, J.)

Sd/-

Dt:17-12-1997 (R.P.Dholakia, J.)

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